

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Hovnanian Enterprises, Inc.

Respondent.

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. CWA-03-2012-0191DN

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

The following findings are made and this Order for Compliance is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA, Region III, and further delegated to the Director, Water Protection Division, Region III.

Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under section 402 of the Act, he shall issue an Order requiring such person to comply with such section or requirement.

II. FINDINGS

1. Section 301(a) of the Act, 33 U.S.C. § 1311, prohibits the discharge of any pollutant by any person from a point source to navigable waters except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants or may authorize states to issue such permits.

3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

4. The clearing, grading, excavating and related activities at the Sites identified in Paragraphs 11 and 15 herein constitute “industrial activity” within the meaning of § 402(p) of the Act and 40 C.F.R. §§ 122.2 and 122.26(b)(14)(x) or (15).

5. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

6. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (MDE) to issue NPDES permits in 1989.

7. On January 1, 2009, MDE issued an NPDES Construction General Permit, No. MDR10, with an expiration date of December 31, 2013 (hereinafter, “the Permit”). The Permit authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the permit.

8. Part II.A.3. of the Permit and Code of Maryland (COMAR) Title 26 Subtitle 17 Chapter 01.05 requires the applicant seeking coverage under the MDR 10 to develop and obtain approval from the appropriate approval authority of an erosion and sediment control plan prior to commencing construction.

9. Hovnanian Enterprises, Inc. (“Respondent” or “Hovnanian”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

10. K. Hovnanian Homes of Maryland, LLC (“Hovnanian Maryland”) is a subsidiary of Hovnanian Enterprises, Inc.

11. Prior to June 3, 2010, Hovnanian Maryland submitted a Notice of Intent for coverage under the Permit for the Palisades Site (Palisades NOI), located south of the intersection of Church Road and Central Avenue in Upper Marlboro, Prince George’s County Maryland.

12. On June 3, 2010, MDE determined that the Palisades Site was eligible for coverage under MDR 10, and assigned the Site Permit Number 10PG0063 (“Palisades Permit”).

13. The Palisades Permit was effective on June 3, 2010.

14. Pursuant to the Palisades Permit, Hovnanian Maryland developed a Sediment Control and Stormwater Management Plan a/k/a Erosion and Sediment Control ("ESC Plan"), which is incorporated into the Palisades Permit. The ESC Plan was initially developed on March 15, 2010 and approved by Prince George's County on April 29, 2010, with a revision approved by Prince George's County on June 22, 2010. Hovnanian Maryland submitted a revised ESC Plan on April 8, 2011, and that revision was approved by Prince George's County on April 15, 2011.

15. Prior to September 10, 2010, Hovnanian Maryland submitted a Notice of Intent for coverage under the Permit for a construction site known as the Shipley Farm Site (hereinafter, "Shipley Site"), located near the intersection of Town Farm Road and Rutherford Road in Upper Marlboro, Prince George's County Maryland.

16. On September 10, 2010, MDE determined that the Shipley Site was eligible for coverage under MDR 10, and assigned the Site Permit Number 10 PG00001 ("Shipley Permit").

17. The Shipley Permit was effective on September 10, 2010.

18. Pursuant to the Shipley Permit, Hovnanian Maryland developed a Sediment Control and Sediment Grading Plan a/k/a ESC Plan dated March 15, 2010, which is incorporated into the Shipley Permit. The plan was reviewed and approved by Prince George's County on August 10, 2010.

19. On August 24, 2011, representatives of EPA conducted an inspection at both the Palisades and Shipley Sites.

Count 1: Palisades at Oak Creek

20. The Palisades Permit requires, *inter alia*, that Hovnanian Maryland: (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

21. The August 24, 2011 inspection revealed that as of August 22, 2011, Respondent has, at the Palisades Site, failed to, *inter alia*, (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

22. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Shipley Farm

23. The Shipley Permit requires, *inter alia*, that Respondent: (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

24. The August 24, 2011 inspection revealed that since April 15, 2011 at the Shipley Site, Respondent has failed to, *inter alia*, (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

25. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, this _____ day of _____, 2012, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

1. Within thirty (30) days of the effective date of this Order, Respondent shall take all actions necessary to comply with NPDES Permit Nos. 11PG0001 and 10PG0063, including but not limited to:
 - a. Selecting, installing, implementing and maintaining control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards
 - b. Take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters or conveyance systems leading to surface waters, particularly in the Chesapeake Bay watershed;
 - c. Properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit;
 - d. Install, maintain, and inspect storm sewer inlet protection;
 - e. Inspect and maintain sediment basins;
 - f. Install, maintain, and inspect silt fences;
 - g. Conduct inspections and prepare and maintain records of inspection including any corrective actions taken as a result of the inspections; and
 - h. Ensure proper operation and maintenance of its Post-Construction Stormwater Management Plan.
2. Within 45 days of the effective date of this Order, Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein. The report shall also include details of the costs incurred in taking such actions. The report shall be submitted to EPA, at the address provided in Paragraph IV.2, above.
3. Within 15 days of the effective date of this Order, Respondent shall prepare and submit to EPA for approval a Quality Assurance Plan documenting self-inspections by the Site Stormwater Compliance Representative as defined in the Paragraph 1 of the Consent Decree

between EPA, *et al.* and Hovnanian Enterprises, Inc., Docket No. 10-cv-1742-TJS (E.D. Pa. 2010).

4. All documents required by Paragraphs 2 and 3 of this Section shall be accompanied by a certification signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____"

All documents required herein shall be submitted to:

Peter Gold
Environmental Engineer
NPDES Enforcement Branch
Mail Code 3WP42
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

1. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

2. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

V. EFFECTIVE DATE

This ORDER is effective upon receipt by the Respondent.

SO ORDERED:

Date: _____

Jon Capacasa
Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

For Hovnanian Enterprises, Inc.:

Date: _____

Name

Title